

**OPINION
57-120**

April 10, 1957 (OPINION)

INSURANCE

RE: Who Authorizes Domestic Life Insurance Company Stock Sales

This is in reply to your letter of March 13, 1957, in which you request the opinion of this office in regard to the question of which department or agency of the state has vested power to authorize the sale of domestic life insurance company stock. In our conversations with you, the opinion of this office was also requested in regard to the control of stock sales.

There is no statute specifically vesting the power in a department of the state to authorize the sale of domestic life insurance company stock. In Chapter 26-08 of the North Dakota Revised Code of 1943 the requisites for the formation and organization of a domestic life insurance company are set out. Section 26-0807 of the North Dakota Revised Code of 1943 provides for the examination of the articles of incorporation by the attorney general and the commissioner of insurance and upon approval and the issuance of a certificate to the effect that such corporation has complied with the law, the corporation may transact business.

Section 26-0808 of the North Dakota Revised Code of 1943 states:

The individuals associated for the purpose of organizing a stock insurance company under the provisions of this chapter, after having filed the articles of incorporation as required by section 26-0805, may open books for subscription to the capital stock of such corporation and keep the same open until the full amount specified in the articles of incorporation is subscribed."

It is the opinion of this office that the approval of the articles of incorporation by the attorney general and the commissioner of insurance as provided in section 26-0807 of the North Dakota Revised Code of 1943 is tantamount to the authorization of the corporation to obtain stock subscriptions in the corporation. It is our opinion that it can be reasonably inferred that upon actual licensing of the company by the commissioner of insurance, the company may sell the stock in the company to the amount specified in the articles of incorporation.

There appears to be no statute under the insurance laws of the state which governs an increase by an insurance corporation of its capital stock.

Section 26-0801 of the North Dakota Revised Code of 1943 states:

All insurance companies incorporated or formed by authority of any law of this state, except when otherwise expressly provided, may exercise the powers and shall be subject to the

duties and liabilities provided by this title. The general provisions contained in the title Corporations relating to the powers, duties, and liabilities of corporations shall apply to all incorporated domestic insurance companies so far as such provisions are pertinent and not in conflict with the provisions contained in this title relating to such companies."

Therefore, reading the above section, any increase of capital stock by a domestic insurance company would be controlled by the law under the title Corporations. The sections which relate to the increase of capital stock under the title Corporations are sections 10-0330 and 10-0331 of the North Dakota Revised Code of 1943 as amended.

Sections 26-0814, 26-0815 and 26-0816 of the North Dakota Revised Code of 1943 relate to the impairment of capital stock of a domestic insurance company. These sections give the commissioner of insurance authority to correct such impairment. Section 26-0710 of the North Dakota Revised Code of 1943 provides that the commissioner of insurance may make inquiries into any transactions by a company doing business in the state.

From the sections listed above, it is apparent that the commissioner of insurance has supervisory capacity over any stock sales by a domestic company in this state in order that he may protect the policyholders.

In the matter of fraudulent practices by an insurance company in this state in selling its stock, it is the opinion of this office that the commissioner of securities has authority and jurisdiction. Although securities of an insurance company in North Dakota are exempt from registration under section 10-0405 of the 1953 Supplement to the North Dakota Revised Code of 1943, the company and persons connected therewith are subject to prosecution by the commissioner of securities, as stated in section 10-0416, for fraudulent practices, as stated in section 10-0415, both of the 1953 Supplement to the North Dakota Revised Code of 1943.

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